

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

-----  
In re:

BKY 02-30340 GFK

*Pauline C. Kruger,*

Chapter 13 Case

Debtor.  
-----

**NOTICE OF HEARING AND MOTION OBJECTING TO CONFIRMATION OF  
CHAPTER 13 PLAN**

TO: All parties in interest pursuant to Local Rule 9013-3:

1. Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), by and through her undersigned attorney, moves the court for the relief requested below and gives notice of hearing.

2. **NOTE: CONTESTED MATTERS ONLY THAT WERE  
ORIGINALLY SCHEDULED TO BE HEARD BEFORE CHIEF JUDGE KISHEL  
ON SEPTEMBER 23, 2004 ARE CONTINUED FOR HEARING TO  
OCTOBER 28, 2004.** The court will hold a hearing on this motion at 10:30 a.m. on October 28, 2004, in Courtroom 228B, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota

3. Any response to this motion must be filed and delivered not later than 10:30 a.m. on October 27, 2004 which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than October 25, 2004, which is three business days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Chapter 13 petition commencing this case was filed on January 23, 2002. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 1322 and 1325 and Bankruptcy Rule 3015. This motion is filed under Bankruptcy Rule 9014 and Local Rules 3015-3, 9006-1, 9013-1 through 9013-5, and such other Local Rules as may apply. Movant requests relief with respect to denial of confirmation of the Debtor's proposed Chapter 13 plan dated August 13, 2004 (the "Plan").

6. On January 23, 2002 the Debtor filed a Chapter 13 plan providing for a payment of \$200 per month for 26 months, for a total of \$5,200 to be paid to the Chapter 13 Trustee for distribution to creditors, then an additional \$550 per month for 10 months, for a total of \$5,500, which was confirmed on March 28, 2002. The plan projected an 82% repayment to creditors based upon estimated claims. The Debtor now seeks confirmation of a modified plan to cure arrearages in her payments to the Chapter 13 Trustee by reducing the amount of her payments to the Chapter 13 Trustee to \$200 per month for an additional five months, reducing the plan term to 36 months. The Plan provides for payments of \$200 per month for five additional months, for a total of \$1,000 to be paid to the Chapter 13 Trustee for distribution to creditors. The plan projects a 62% return to unsecured creditors, based upon unsecured claims filed prior to expiration of the claims bar date.

7. According to the Trustee's records, the Debtor has made only 28 payments during the pendency of her Chapter 13 case, 26 payments of \$200, followed by two additional payments of \$550, as shown by a copy of the Trustee's payment record incorporated herein and attached hereto as Exhibit A. She now seeks to modify her plan, making less than 36 payments to the Trustee, producing a much smaller percentage return to unsecured creditors, and thereafter receive a discharge of her remaining debts under 11 U.S.C. § 1328(a).

8. As such, the Debtor seeks to obtain a discharge of her remaining unsecured debts after making no more than 33 payments to the Chapter 13 Trustee, for a total distribution to creditors of 62%.

9. It is the Trustee's position that the current modified plan unfairly manipulates the provisions of the Bankruptcy Code to the detriment of unsecured creditors. The Debtor has benefited from the protection afforded by the automatic stay in Chapter 13 for 32 months as of the date of this Motion, while making only 28 payments to the Chapter 13 Trustee. It is the Trustee's position that the three-year period contemplated by the Statute means that a debtor must make at least 36 payments, not simply remain in Chapter 13 for 36 months, without regard for missed payments during the pendency of a 36-month plan.

10. If necessary, the Debtor and/or representatives of the Chapter 13 Trustee may be called to testify as to the matters alleged in this motion.

WHEREFORE, the Trustee requests that confirmation of the Debtor's proposed Chapter 13 plan be denied, and such other relief as may be just and equitable.

Jasmine Z. Keller, Trustee

Dated: September 8, 2004

/e/ Margaret H. Culp  
Thomas E. Johnson, ID # 52000  
Margaret H. Culp, ID # 180609  
Counsel for Chapter 13 Trustee  
12 South 6th Street, Suite 310  
Minneapolis, MN 55402-1521  
(612) 338-7591

### **VERIFICATION**

I, Margaret H. Culp, employed by Jasmine Z. Keller, Chapter 13 Trustee, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed: September 8, 2004

/e/ Margaret H. Culp

## Case Status Report - Receipts History

Page 1  
Chapter 13

02-30340-GFK

Status as of 9/8/2004

PAULINE C KRUGER  
5665 138TH STREET NORTH

HUGO MN 55038

First Pmt Date 02/22/2002

Atty: Becky A. Moshier  
\* HOLD ALL \*

Delinquent \$1,650.00

5 Rmng of 36 Mos.

Payment: \$550.00 Per M

## Graduated Payment Plan

Months	1	Thru	26	\$200.00	Per Month =	\$5,200.00
Months	27	Thru	36	\$550.00	Per Month =	\$5,500.00

Check	Batch Id	Date	Amount Paid	Src	Type	Description	Employer
5043593202	04060160	6/25/2004	\$550.00	MO	Money Order		
5038049364	04040149	4/26/2004	\$550.00	MO	Money Order		
06053019581	04030151	3/23/2004	\$200.00	MO	Money Order		
05721085146	04020161	2/25/2004	\$200.00	MO	Money Order		
06053714403	04020055	2/9/2004	\$400.00	MO	Money Order		
603185951	03120161	12/24/2003	\$200.00	MO	Money Order		
05468935353	03110144	11/25/2003	\$200.00	MO	Money Order		
05469663870	03100134	10/22/2003	\$200.00	MO	Money Order		
05469662700	03090102	9/17/2003	\$200.00	MO	Money Order		
05467246650	03080169	8/27/2003	\$200.00	MO	Money Order		
2304	03070175	7/29/2003	(\$200.00)	NS	*NSF*		
2304	03070135	7/22/2003	\$200.00	PC	Personal Check		
2276	03060157	6/24/2003	\$200.00	PC	Personal Check		
2269	03050157	5/23/2003	\$200.00	PC	Personal Check		
2251	03040164	4/24/2003	\$200.00	PC	Personal Check		
2237	03030160	3/24/2003	\$200.00	PC	Personal Check		
2225	03020156	2/24/2003	\$200.00	PC	Personal Check		
2207	03010140	1/22/2003	\$200.00	PC	Personal Check		
2198	02120218	12/31/2002	\$200.00	PC	Personal Check		
2182	02110171	11/25/2002	\$200.00	PC	Personal Check		
2173	02100170	10/24/2002	\$200.00	PC	Personal Check		
2162	02090114	9/17/2002	\$200.00	PC	Personal Check		
2152	02090009	9/3/2002	\$200.00	PC	Personal Check		
2138	02070147	7/22/2002	\$200.00	PC	Personal Check		
2112	02060681	6/14/2002	\$200.00	PC	Personal Check		
2097	02050160	5/22/2002	\$200.00	PC	Personal Check		
2073	02040120	4/16/2002	\$200.00	PC	Personal Check		
2055	02030136	3/19/2002	\$200.00	PC	Personal Check		
2037	02020132	2/19/2002	\$200.00	PC	Personal Check		

Total \$6,300.00

EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

-----  
In re:

BKY 02-30340 GFK

*Pauline C. Kruger,*

Chapter 13 Case

Debtor.  
-----

**MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION**

FACTS

The facts supporting the Trustee's objection are summarized in the accompanying motion and will not be repeated here. The Trustee also relies on the representations made by the Debtor in her verified Schedules and Statements on file and of record herein.

LEGAL DISCUSSION

- I. Even if the "best efforts" test does not apply to post-confirmation plans, a debtor must provide for a minimum of 36 payments to creditors.

Bankruptcy Code section 1325(a)(1) requires that a plan must comply with the provisions of Chapter 13 and other applicable provisions of Title 11. As indicated in the Statute, the 36-month plan period begins on the date that the first payment is due under the plan. *11 U.S.C. § 1325(b)(1)(B)*. The Debtor's first confirmed plan required that the first plan payment be made in February 2002. From February 2002 to September 2004, the Debtor made a total of 26 payments of \$200 each, followed by two additional payments of \$550. Therefore, the Debtor has made no more than 28 payments to the Chapter 13 Trustee during the 32-month period she has enjoyed the protection of the automatic stay. There is no support in the record as provided by the Debtor to justify fewer than 36 payments to the Trustee. Maintaining the integrity of confirmed plans is an important part of the Chapter 13 process. *In re Guernsey*, 189 B.R. 477, 482 (Bankr. D. Minn. 1995). Unless the Debtor can provide compelling support for such a modification providing for less than 36 payments, and an effective "meltdown" of the return to unsecured creditors from the original 82% to 62%, confirmation should be denied.

As of the date of this Motion, the Debtor has remained under the protection of the Bankruptcy Court for 32 months, but now seeks release from her concomitant responsibility of making at least 36 payments to the Trustee. In essence, the Debtor seeks to escape the consequences of her payment defaults by filing a modified plan that not only limits her payment obligation to 33 payments, but also frustrates the reasonable expectations of creditors who have been led to anticipate a stream of payments for at least

36 months over the last 32 months. It is the Trustee's position that the Debtor's modified plan must continue until the Debtor has made at least 36 payments in order to demonstrate good faith. Anything less constitutes an unfair manipulation of the Bankruptcy Code. *In re Debing*, 202 B.R. 291 (Bankr. D. Minn. 1996); *In re Nelson*, 189 B.R. 748 (Bankr. D. Minn. 1995); *In re Guernsey*, 189 B.R. 477 (Bankr. D. Minn. 1995); *In re Nelson*, 189 B.R. 748 (Bankr. D. Minn. 1995). And see *In re Walters*, 223 B.R. 710, 712 (Bankr. W.D. Missouri 1998); *In re Vasquez*, 261 B.R. 654 (Bankr. N.D. Tex. 2001).

### CONCLUSION

For the reasons stated herein, confirmation of the Debtor's proposed Chapter 13 plan should be denied.

Respectfully submitted:

Dated: September 8, 2004

/e/ Margaret H. Culp  
Thomas E. Johnson, ID # 52000  
Margaret H. Culp, ID # 180609  
Counsel for Chapter 13 Trustee  
12 S. 6th Street, Suite 310  
Minneapolis, MN 55402-1521  
(612) 338-7591

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

-----  
In re:

BKY 02-30340 GFK

*Pauline C. Kruger,*

Chapter 13 Case

Debtor.  
-----

**UNSWORN DECLARATION FOR PROOF OF SERVICE**

I, Margaret H. Culp, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on September 8, 2004, I served Notice of Hearing and Motion Objecting to Confirmation of Plan, Memorandum of Facts and Law and proposed Order on the individual(s) listed below, in the manner described:

**By facsimile transmission:**

United States Trustee  
612-664-5516  
Becky A. Moshier, Esq.  
651-645-1022

**By first class U.S. mail:**

Pauline C. Kruger  
5665 138<sup>th</sup> Street North  
Hugo, MN 55038

Becky A. Moshier, Esq.  
2233 University Avenue West, #420  
St. Paul, MN 55114

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: September 8, 2004

/e/ Margaret H. Culp

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

-----  
In re:

*Pauline C. Kruger,*

Debtor.

-----

BKY 02-30340 GFK

Chapter 13 Case

**ORDER DENYING CONFIRMATION OF CHAPTER 13 PLAN**

At St. Paul, MN, \_\_\_\_\_, 2004.

The above-entitled matter came on for hearing before the undersigned United States Bankruptcy Judge on the Chapter 13 Trustee's objection to confirmation of the Debtor's proposed Chapter 13 plan.

Appearances were noted in the minutes.

Upon the foregoing objection, arguments of counsel, and all of the files, records and proceedings herein:

IT IS ORDERED:

Confirmation of the Debtor's proposed Chapter 13 plan dated August 13, 2004 is **DENIED**.

\_\_\_\_\_  
Gregory F. Kishel  
Chief United States Bankruptcy Judge